

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application for:

Alden J. Blowers

Serial No. 10/678,326

Filed: October 3, 2006

For: METHOD FOR PROVIDING
COMPREHENSIVE ACH VENDOR
SERVICES

Examiner: Paul W. Shumate

Art Unit: 3693

Confirmation No. 2584

DECLARATION PURSUANT TO 37 C.F.R. §1.132

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

I, Alden J. Blowers, hereby declare that:

1. I am a chief executive officer of Cachet Banq, Inc.
2. I am the Inventor and owner of the above-identified patent application
3. I have reviewed U.S. Patent 6,411,938 issued to Gates et al ("Gates"), U.S. Patent 5,987,433 issued to Crapo ("Crapo"), U.S. Patent 5,117,356 issued to Marks ("Marks") and Alexander, Marcus and Young, "Strategic Outsourcing," Long Range Planning, 29 February 1996:116-119 ("Alexander") and the rejections under 35 U.S.C § 103, asserted by the U.S. Patent and Trademark Office against all of the pending claims of the present application, namely claims 1-22 and believe that these claims should be considered non-obvious over Gates, Crapo, Marks and Alexander based on the evidence provided herewith.

4. Our product FLEXACH[®] implements each of the elements of the pending claims, including “receiving at least one ACH transaction by a computer system executing a payroll service from a payroll vendor for a client of the payroll vendor” where a payroll service provider “is separate from the payroll vendor,” “verifying the at least one ACH transaction by the payroll service of the payroll service provider, the verifying including error checking of the at least one ACH transaction,” “executing the at least one ACH transaction by the payroll service of the payroll service provider,” “executing the at least one ACH transaction by the payroll service of the payroll service provider” and “limiting financial risk by providing balancing information and control of the ACH transaction execution to the payroll vendor through the payroll service of the payroll service provider.” Other elements included in the FLEXACH[®] service include “checking the ACH data for erroneous data,” “determining a risk management scheme for the ACH related data to protect the payroll vendor,” “processing the ACH related data by a payroll service provider according to the risk management scheme, the payroll service provider separate from the payroll vendor,” “using a double entry accounting system in processing transactions” and retesting various recited aspects of the files prior to processing amongst the other aspects of the FLEXACH[®] service. Since all of the features recited in the independent claims are embodied in the FLEXACH[®] service, there is a clear equivalence between the FLEXACH[®] service and the claimed invention in the above-referenced patent application.

5. The commercial success of this product is evidence of the non-obviousness of the claimed invention and the commercial success has a nexus with the elements of the claims of the above-referenced patent application. We conducted a survey of all of our FLEXACH[®] service customers to determine what features of the service were important in their decision to utilize the FLEXACH[®] services and also in their decision to continue to utilize the FLEXACH[®] services. This survey was conducted in April and May of 2010. See survey form (Exhibit A). All of our customers completed the survey and all of our customers indicated that the “error checking, balancing and control features provided in the instantaneous confirmation report in the Cachet only ACH (FLEXACH[®])” was an important feature that caused them to select the FLEXACH[®] services and continue to use the FLEXACH[®] services. These “error checking, balancing and control features,” as they are understood by our customers, correlate to the elements of “verifying the at least one ACH transaction by the payroll

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service of the payroll service provider, the verifying including error checking of the at least one ACH transaction” and “limiting financial risk by providing balancing information and control of the ACH transaction execution to the payroll vendor through the payroll service of the payroll service provider.” The elements of “receiving at least one ACH transaction by a computer system executing a payroll service from a payroll vendor for a client of the payroll vendor” where a payroll service provider “is separate from the payroll vendor,” and “executing the at least one ACH transaction by the payroll service of the payroll service provider” are inherent aspects of the FLEXACH® services. Thus, the elements of the claims have a nexus with the commercial success of the FLEXACH® services, because the features of the claims have been identified by customers as the reason that they purchased the product. This directly relates the commercial success of the product to the elements of the claims.

6. The attached graphs (Exhibits B-E) show the growth of our business through contracts with clients and the client transactions through our FLEXACH® service. We began offering the FLEXACH® service in February 2004. From 2004 to the present day our FLEXACH® service has been enormously successful. The client numbers depicted in Exhibit B are the total number of clients contracting for the use of FLEXACH® during the respective years. The client numbers have grown dramatically each year through to the present.

Similarly, the revenues generated from the FLEXACH® service (Exhibit C) have followed a similar course of dramatic increase from the point of the introduction of the FLEXACH® service. Exhibits D and E demonstrate that not only have the number of customers utilizing the FLEXACH® service increased, but also their reliance on the features of service have dramatically increased.

7. Cachet Banq and the FLEXACH® service do not have other market advantages to leverage to create the commercial success that is demonstrated by the FLEXACH® service in the attached Exhibits. To the contrary, ADP, Paychex and Ceridian dominate the payroll services market. Further, the FLEXACH® service has not had an extensive marketing campaign and the other features of the FLEXACH® service do not distinguish it from the services offered by competitors such as ADP, Paychex and Ceridian. Thus, the commercial success of the FLEXACH® service is primarily based on the features discussed above and recited in the claims and not based on extrinsic factors.

attached Exhibits. To the contrary, ADP, Paychex and Ceridian dominate the payroll services market. Further, the FLEXACH[®] service has not had an extensive marketing campaign and the other features of the FLEXACH[®] service do not distinguish it from the services offered by competitors such as ADP, Paychex and Ceridian. Thus, the commercial success of the FLEXACH[®] service is primarily based on the features discussed above and recited in the claims and not based on extrinsic factors.

8. The features of FLEXACH[®] including the "error checking," "balancing" and "control," which are provided by Cachet as a payroll ACH service provider to payroll vendors is a combination of services that is not provided by our competitors in this form. By providing these features as a payroll ACH service provider the risk from executing ACH transactions as part of the overall payroll process is reduced due to this additional level of checking that is performed in advance of the ACH transactions being forwarded to the banking network and importantly this reduces the financial risk for the payroll vendor.

9. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-identified application or any patent issued thereon.

Respectfully submitted,

Dated: 8/28, 20010



Alden J. Blowers

CEO Cachet Banq, Inc.

Enclosures: Exhibit A (Survey Form)
Exhibit B (Total Number of Customers Graph)
Exhibit C (Total Revenues Graph)
Exhibit D (Total Number of Transactions Graph)
Exhibit E (Dollar Value of Processed Transactions Graph)

EXHIBIT A

Cachet Banq Client Satisfaction Survey – 2009 Service

Page 1 – Client Satisfaction Survey

1. When you call Cachet, do the receptionists answer the phone in a courteous and professional manner? Please list their name(s) and any comments below.
- ☐ Yes
- ☐ No

Additional Comments

2. Is Cachet Customer Service knowledgeable and accommodating to your needs?
- ☐ Extremely
- ☐ Very
- ☐ Somewhat
- ☐ Not very
- ☐ Not at all

3. Is Cachet Customer Service friendly and helpful? Please list their names and any comments below.
- ☐ Always
- ☐ Usually
- ☐ Sometimes
- ☐ Rarely
- ☐ Never

Additional Comments

4. Are your calls returned by Cachet in a timely manner?
- ☐ Always
- ☐ Usually
- ☐ Sometimes
- ☐ Rarely
- ☐ Never
5. Are your emails returned by Cachet in a timely manner?
- ☐ Always
- ☐ Usually
- ☐ Sometimes
- ☐ Rarely
- ☐ Never

6. How would you rate your experience and customer service when dealing with NOCs and/or NSF Notifications? Please share any comments and specific details of your experiences.

- ☐ Very positive
- ☐ Somewhat positive
- ☐ Somewhat negative
- ☐ Very negative

Additional Comments

7. How accurate are your invoices?

- ☐ Always accurate
- ☐ Usually accurate
- ☐ Sometimes accurate
- ☐ Rarely accurate

8. Are issues related to your invoices resolved quickly and to your satisfaction? Please list any additional comments below.

- ☐ Always
- ☐ Usually
- ☐ Sometimes
- ☐ Rarely
- ☐ Never
- ☐ Not Applicable

Additional Comments

9. How would you rate our online ACH system? Please list any specific details or comments below.

- ☐ Good, I do not usually have problems
- ☐ Fair, but I have had some problems
- ☐ Poor, the system could use improvements

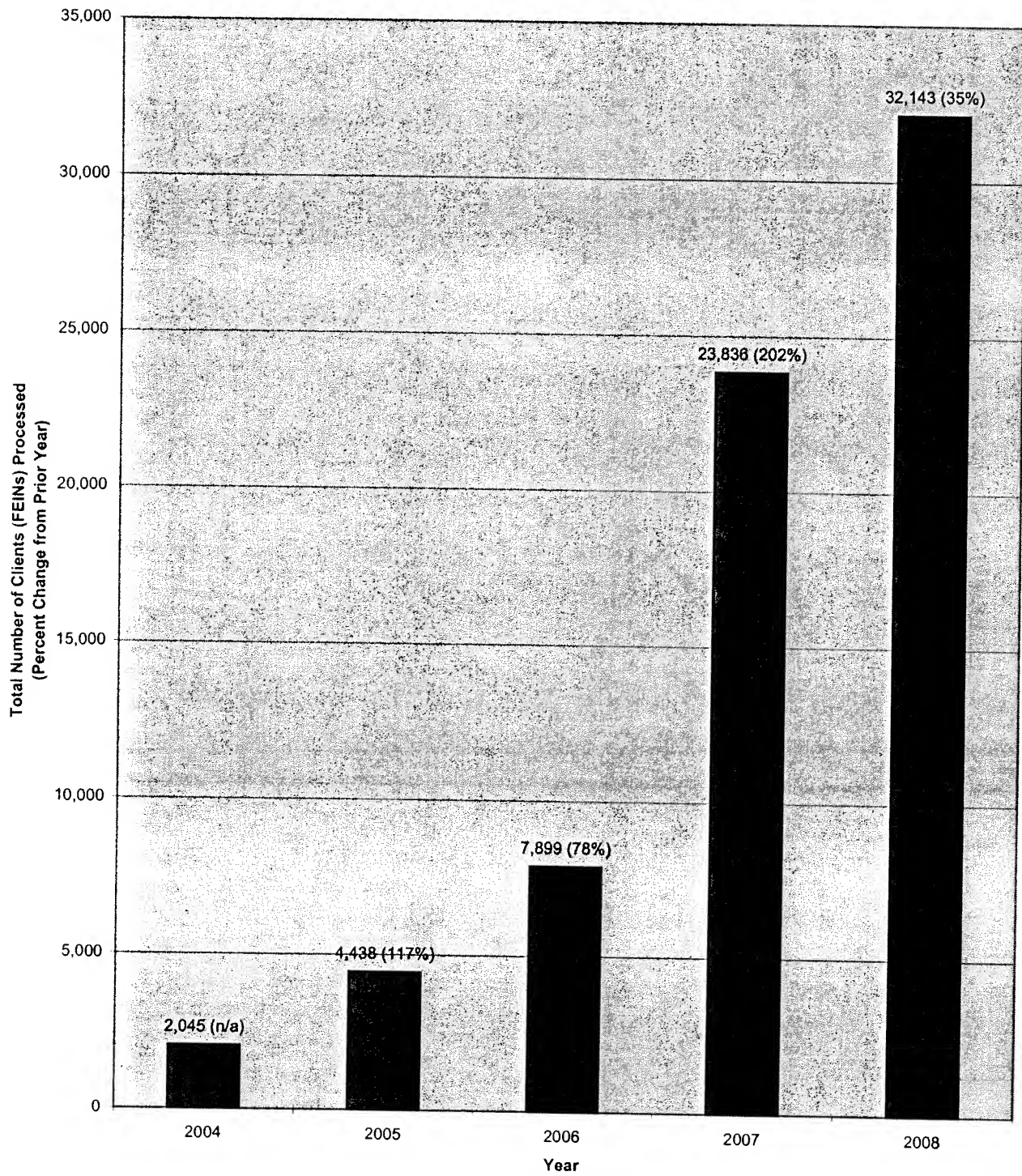
Additional Comments

10. Would the ability to view your billing online (i.e., monthly ACH invoices) be beneficial to your company?

- ☐ Yes, very beneficial
- ☐ Somewhat beneficial
- ☐ No, this is not important to our company

EXHIBIT B

**Total Number of Clients (FEINs) Processed
2004-2008**



Number of Companies Processed
for 12 months ending
June 30, year noted

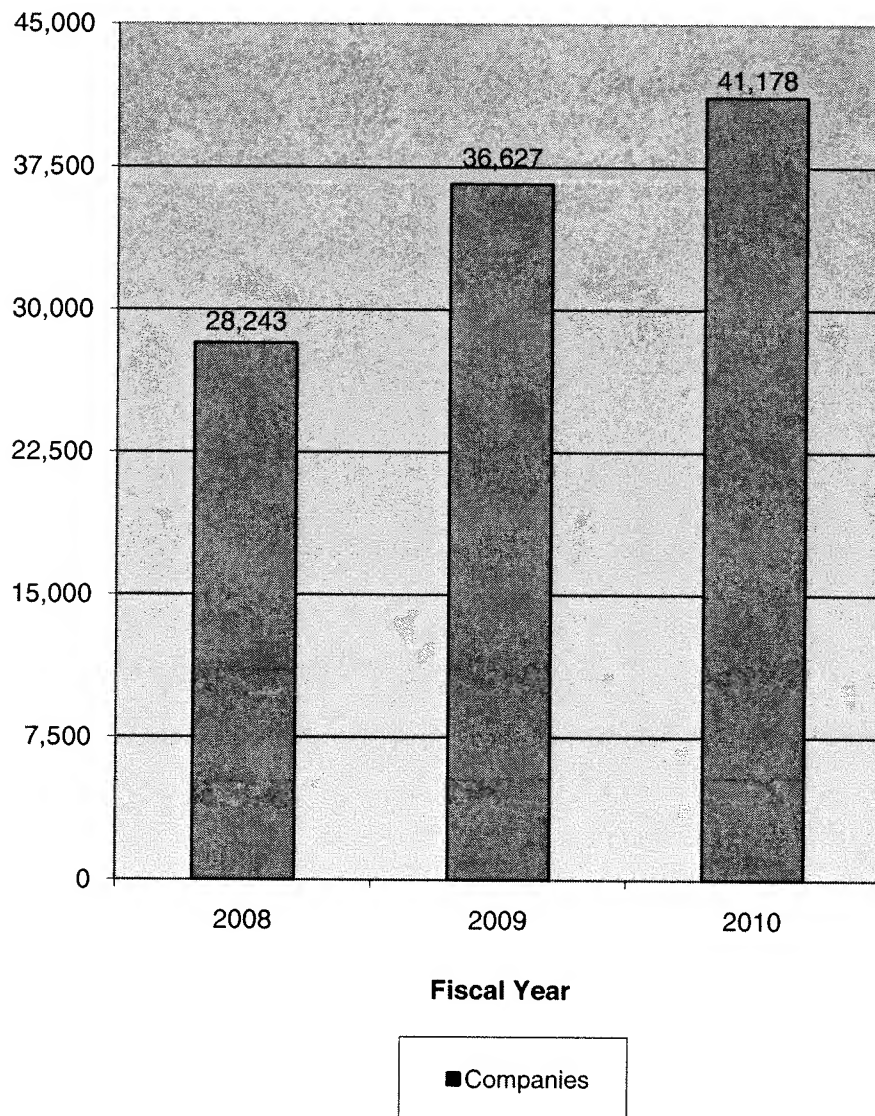
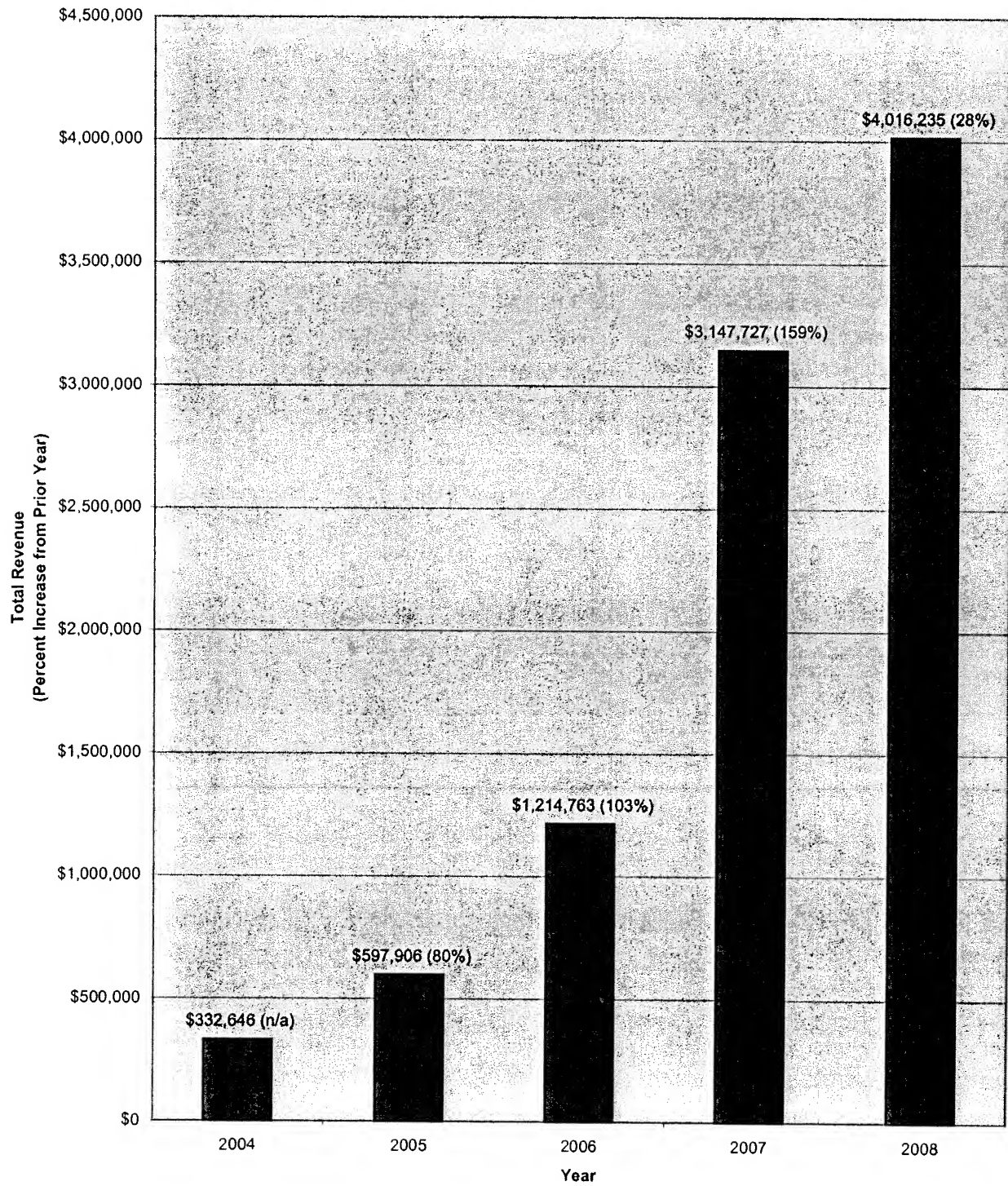
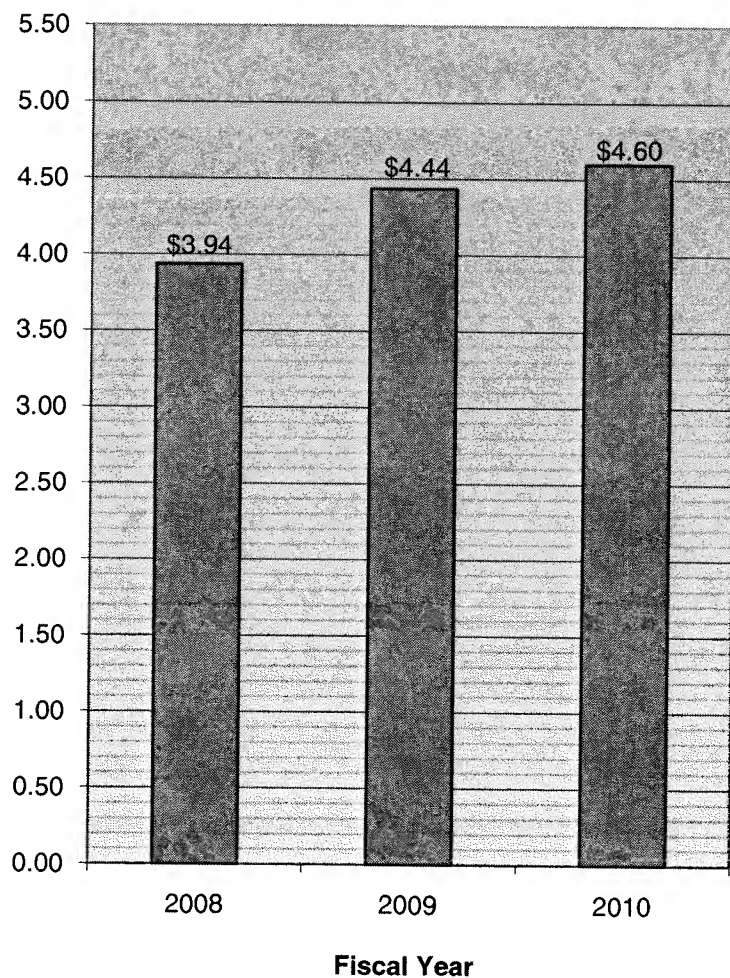


EXHIBIT C

**Total Revenue
2004-2008**



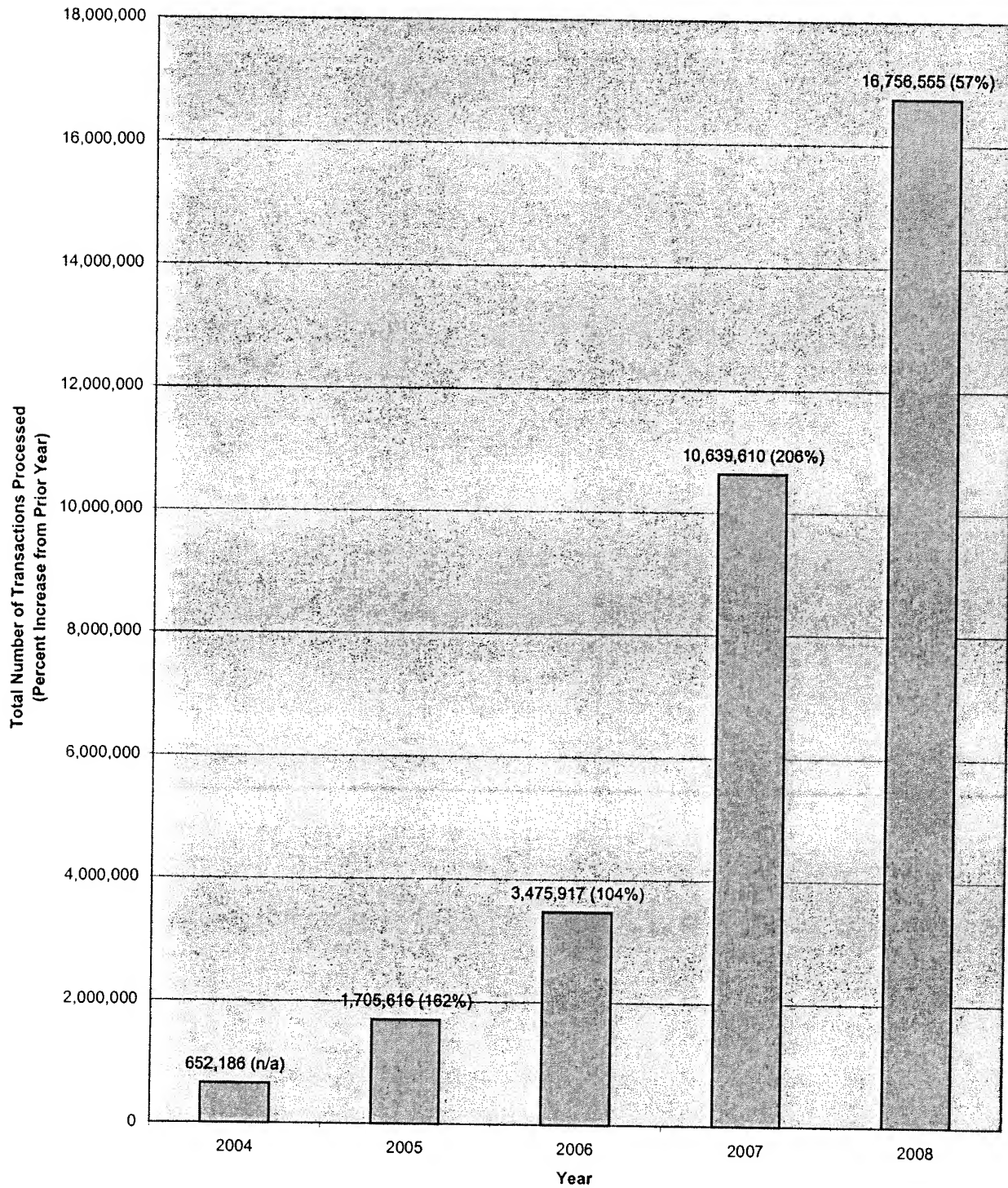
Revenues Generated for 12 months ending June 30, year noted



■ Revenues (amt in Millions)

EXHIBIT D

**Total Number of Transactions Processed
2004-2008**



Number of Transactions Processed
for 12 months ending
June 30, year noted

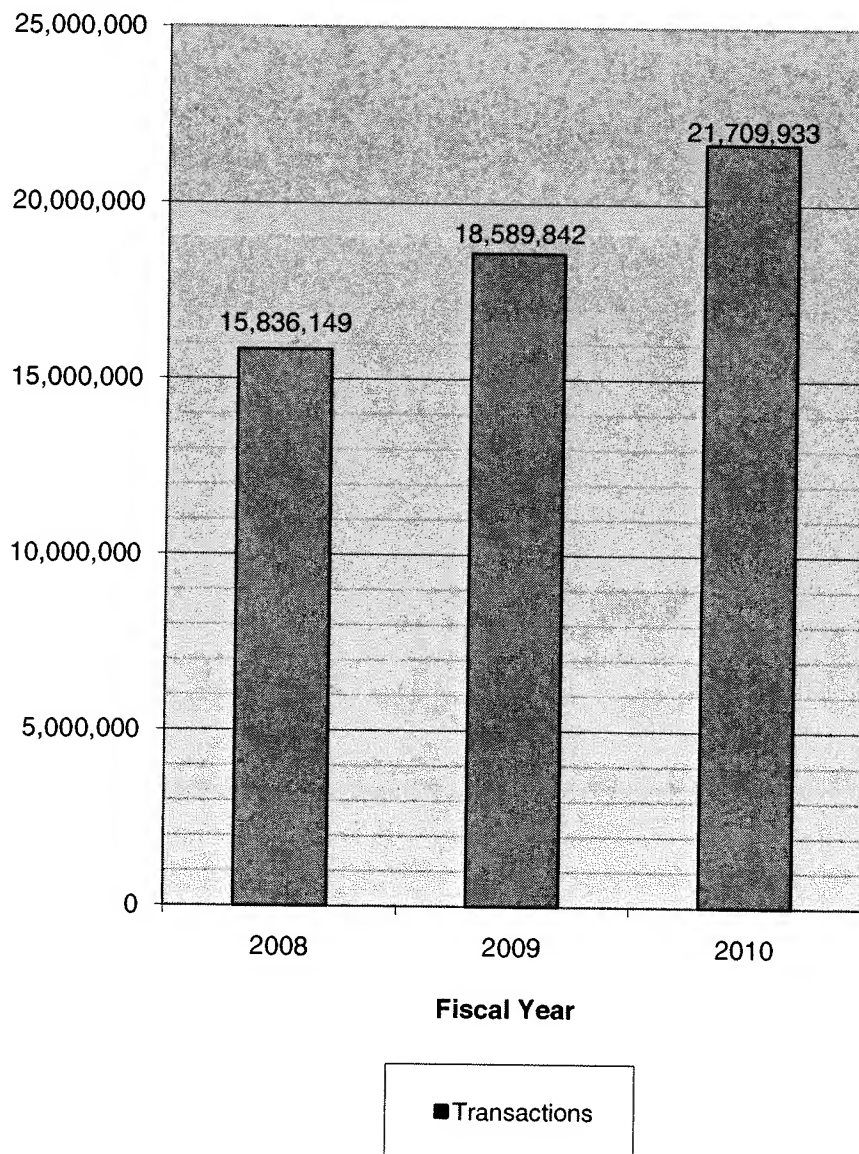
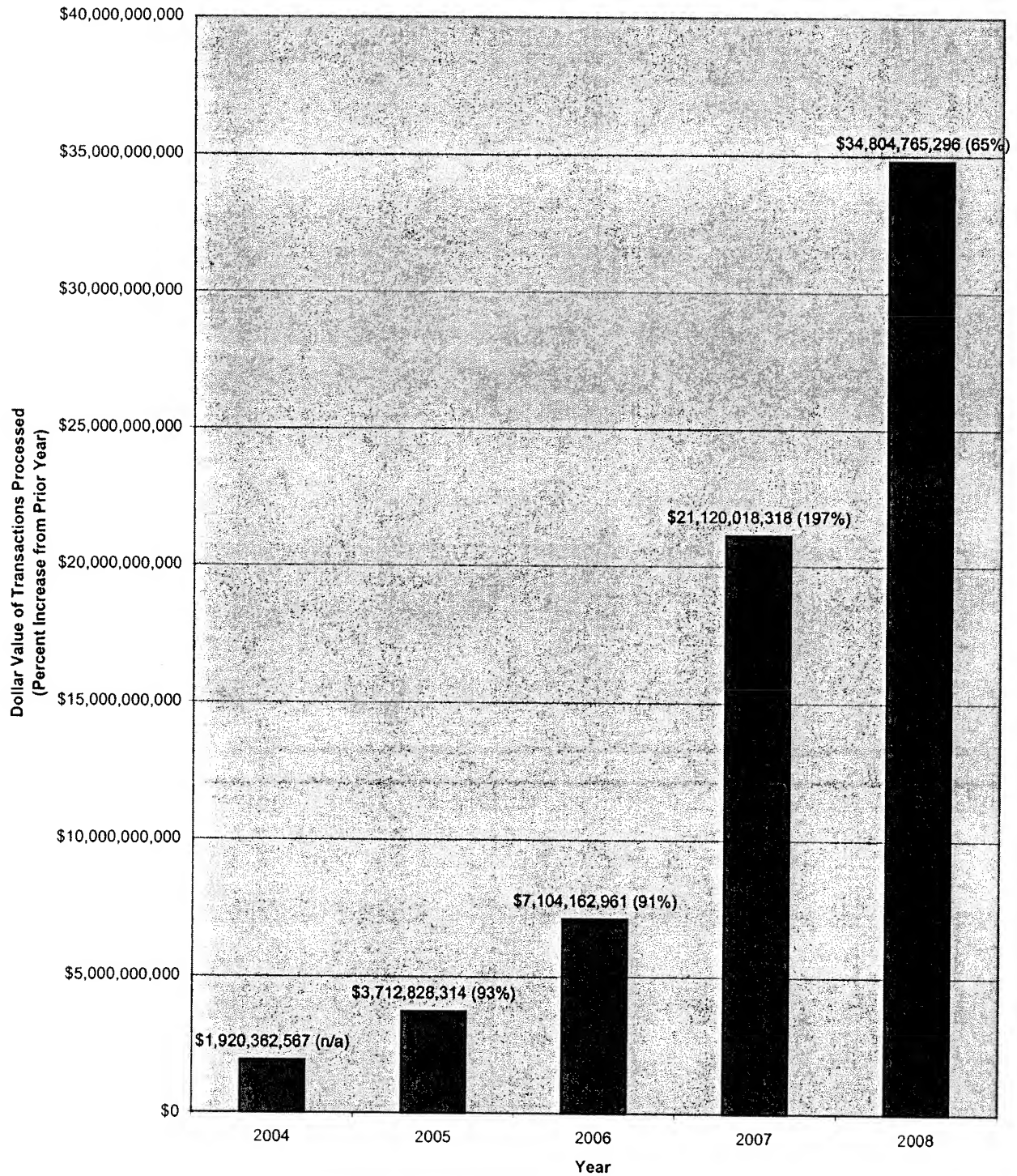
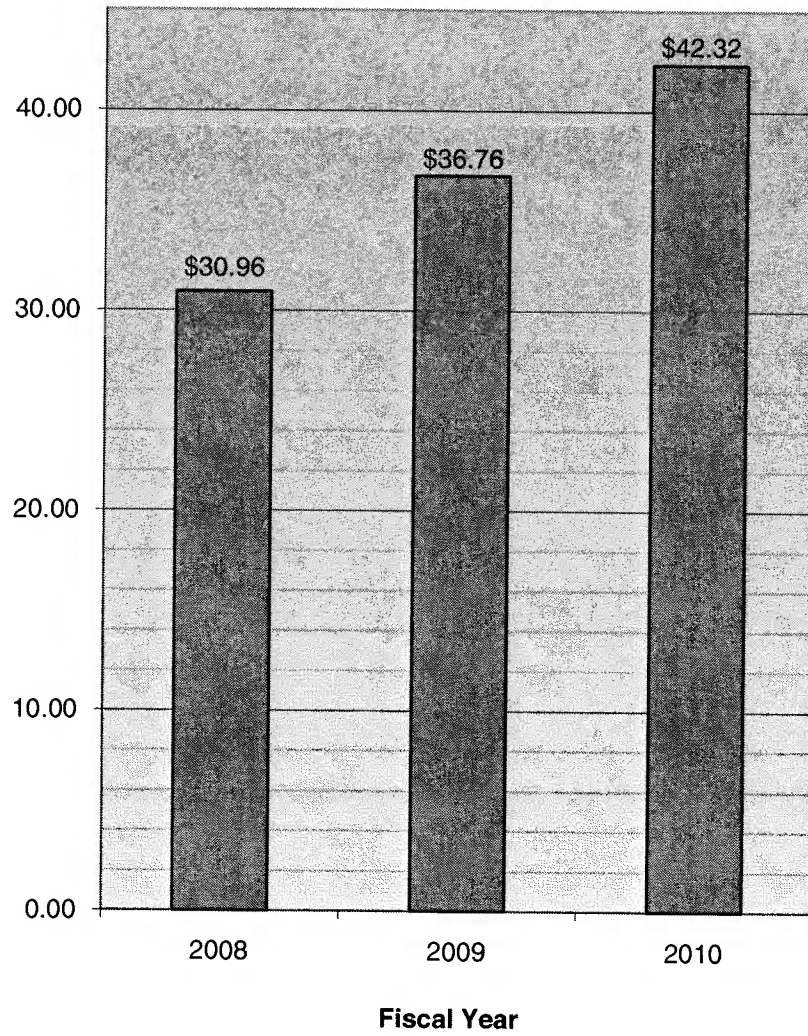


EXHIBIT E

**Dollar Value of Transactions Processed
2004-2008**



Dollars of Transactions Processed
for 12 months ending
June 30, year noted



■ Dollars (amt in Billions)